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CableState



Massachusetts Cable Television Commission

Summer 1988

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Consolidation of Cable Properties Continues

by Penelope Wells,
Executive Director

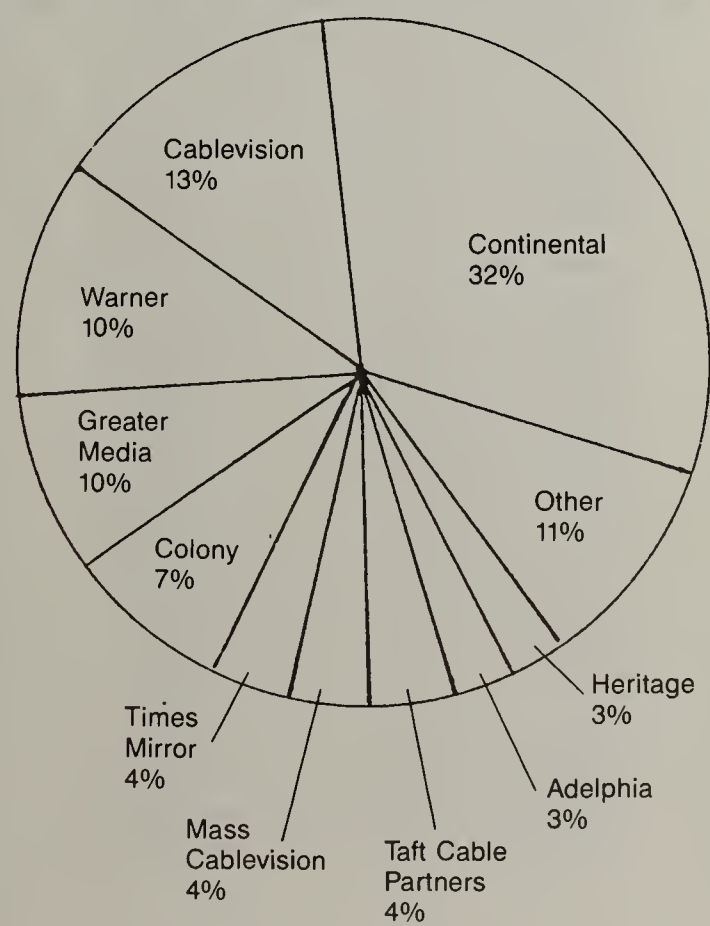
The profile of cable operations in the state of Massachusetts has changed dramatically in the last year. A total of 114 license transfer applications—an unprecedented number—have been filed with the Commission over the past 18 months. These transfers involve cable systems serving almost 400,000 subscribers around the state.

The Massachusetts phenomenon is not unique. Market conditions, especially prior to the October 1987 stock market crash, have encouraged the sale of cable properties across the nation. As a result, many smaller, independent cable companies sold their properties for substantial gains. In addition, the slow down in initial licensing has led to a stronger focus by cable companies on consolidating and regionalizing holdings. Still other companies which found themselves attractive targets sought protection from undesired takeover attempts through leveraged buyouts and friendly takeovers. The result was a flurry of transfer activity across the country which has not yet completely settled down.

Several Massachusetts operators have acquired substantial additional holdings. In the largest deal, Continental Cablevision purchased American Cablesystems, thereby merging the two largest cable operators in the state. Continental now serves approximately one third

of the cable subscribers in Massachusetts. The second major transfer occurred when Cablevision Systems Corporation purchased Adams Russell Cable Company, making Cablevision the second largest Massachusetts operator. Today, the top five cable operators serve more than 70 percent of the state's subscribers, and the top ten operators serve almost 90 percent. (In 1986, these figures were 59% and 84% respectively.)

In addition, the country's largest cable operator, TeleCommunications, ("TCI") now owns substantial or controlling interests in three separate cable operators in the state: Taft Cable Partners, Heritage Communications, and U.A.Columbia Cablevision. Other smaller companies, such as Adelphia Communications, also substantially increased their holdings.



Operator Share of Subscribers—1988

Concentration of Ownership

Cable industry officials defend the trend toward concentration of ownership by pointing out that both the motion picture and broadcasting businesses are more heavily concentrated. Some members of Congress, however, are looking at "vertical integration," or the trend of
(Continued on back page)

Commissioner's Corner

This issue of *CableState* is devoted extensively to issues of national importance and the manner in which they affect Massachusetts cable subscribers. Especially since the passage of the federal Cable Communications Policy Act of 1984, matters of federal law have become more important to individual subscribers. Indeed, the Commission as a state regulatory agency performs an especially valuable function—helping communities understand the actions of Congress, the FCC and federal courts. In return, we can also synthesize the information we receive from the 298 cable communities across the state, and provide feedback to the federal level about activities “in the field.”

I am proud of the Commission's participation in the recent FCC rate regulation rulemaking, reported on page 7. The Commission submitted extensive comments urging the FCC to amend its rate deregulation standard to allow more communities to be rate regulated. I am also especially pleased that the FCC adopted the Commission's position in the Mashpee-Channel One case. The FCC ruled that an operator of a resort community serving multiple and single family dwellings is a cable operator as defined by the Cable Act and therefore must obtain a license to operate, regardless of whether its system crosses public ways.

CableState's lead article shows the Massachusetts side of a story developing across the country—the consolidation of cable properties. In this article, we tell you what this means in Massachusetts. The Commission has also begun to explore the legal issues surrounding license transfers, as our recent *Somerset* decision shows. In *Somerset*, the Commission ruled that in order to deny a license transfer, an issuing authority must present adequate evidence to support its position that a large company will be unresponsive to local needs. The Commission found that the Town of

Somerset had failed to present such evidence, and sent the matter back to the Board for further action.

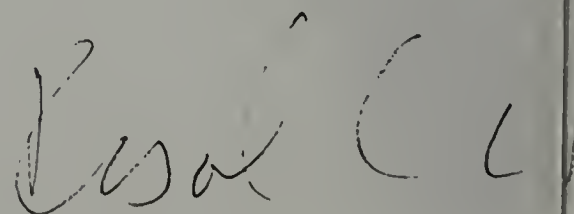
The lead article shows that some Massachusetts cable companies are growing rapidly. While pursuing such growth, however, operators should not lose sight of their responsibilities to individual subscribers. I would like to take this opportunity to remind operators—both existing and new—that the Commission is closely monitoring transfer activity to insure that operators both adhere to Commission regulations and maintain an overall commitment to high quality service for Massachusetts cable subscribers.

The CenterPiece of this issue of *CableState* is “Focus on Federalism,” which explores current trends in federal law affecting cable subscribers in the Commonwealth. One article describes the continuing discussion of rates for cable service. In taking the public pulse, the Commission has found that the single most important issue to subscribers is rates. Since rate deregulation under the Cable Act became effective in January 1987, the Commission has received nearly 300 notices of rate increases. This is far more than occurred prior to federal deregulation, in spite of the scheme of deregulation already in place in Massachusetts before passage of the Cable Act. The Commission is in the process of analyzing the data collected and will report the results when our study is complete. In the meantime, the Commission has invested energy in monitoring the rate freeze decision in Norwood and the litigation in Boston, and enforcing the 30 day rate change and channel lineup notice provisions in our Billing and Termination of Service regulations.

The new syndicated exclusivity (or “syndex”) rules are also highlighted in this issue's CenterPiece, as the Commission continues to monitor changes in and enforce-

ment of federal laws which affect the way cable systems operate in the state. In May, the FCC announced the return of the syndex rules, which allow broadcasters to request deletion from cable systems of certain programming over which the broadcasters have exclusive local rights. Many cable industry officials are concerned that cable systems will be forced to blackout programming in order to comply with syndex, thereby confusing and angering subscribers.

In the face of pressing federal issues, the Commission remains dedicated to fostering the spirit of localism inherent in cable television. That is why this year, even in the face of budgetary cutbacks across the state, we retain our commitment to the Massachusetts Community Television Contest. I note with pride that last year's Contest had over 300 entries, more than ever before. The quality of tapes submitted also continues to improve. The awards ceremony is a high point of each year for us, as well as for the winners, since it brings together the talented and enthusiastic producers and program directors from all over the state who create local programming for cable systems. Please note some new categories and rules this year, which we instituted in our continuing search for a balance of simplicity and fairness. Sign up for the Tape Exchange and share the tremendous programming that is produced in this state each year! Keep up the good work.



Rosalind A. Niles
Commissioner



Legislative Update

The following is a summary of the status of a number of cable bills filed this year. These bills have been considered by the Joint Committee on Government Regulations of the state legislature.

License Renewal Period

S.353 (Norton)

This bill would lengthen the maximum renewal term from 10 to 15 years. The Committee recommended S.353 favorably to the Senate and reported it to the Senate Ways and Means Committee. As it has for the past four years, the Commission opposes this bill because it would make renewal less frequent, thereby reducing municipal opportunities to effect changes in the license at a time when technical and legal issues continue to evolve rapidly.

Pole Attachments

S.363 (Norton)

This bill would extend until December 1993 the jurisdiction of the Department of Public Utilities to determine a just and reasonable rate of return to utilities for the use of their poles for cable attachments. The Committee recommended S.363 favorably to the Senate.

Sale or Repair of TV Sets by Cable Operators

H.2024 (Decas)

H.2024 would delete ch.166A, §5(d), which prevents cable operators from directly or indirectly engaging in the business of selling or repairing television or radio sets. The bill was reported out accompanying H.3975, which would change the types of licenses issued to persons involved in the installation and repair of consumer electronic equipment.

Name of Commission

H.50 (Cable TV Commission/Executive Office of Consumer Affairs & Business Regulation)

H.50 would change the definition of "cable system" under Massachusetts law to match the federal definition. The bill would also formally

change the name of the Commission to the Massachusetts Cable Television Commission and would change all references in Chapter 166A from "community antenna television" to "cable television." At press time, the bill was still pending before the Committee.

Advance Billing

H.2670 (Norton), H.1699 (Grenier)

These bills would disallow billing by cable operators more than two months in advance. Both bills permit advance billing greater than two months where the subscriber is offered a discount in return for prepayment. The Committee recommended H.2670 favorably to the House, and reported it out with H.1699.



Regulatory Affairs

Interpretations

Logging of Both Verbal and Written Complaints Required—In a March 31, 1988 letter to the Hull Cable Commission, Commissioner Rosalind A. Niles explained that verbal complaints must be reported by cable operators on quarterly complaint forms filed with the Commission and issuing authorities pursuant to M.G.L. ch.16A, §10. **The Commission interprets §10 to require the filing of all verbal or written complaints with the Commission.** Many cable advisory committees have expressed strong concern about the failure of cable operators to report verbal complaints. The Commission will take steps to see that this requirement is strictly enforced by all cable operators.

Adjudications

Somerset (CATV Docket A-64)—The Commission recently decided that the Town of Somerset acted arbitrarily and unreasonably when it denied the license transfer application of Heritage Cablevision to Telecommunications, Inc. ("TCI"). The Commission remanded the matter
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CableState is a publication of the Massachusetts Cable Television Commission, an agency of the Executive Office of Consumer Affairs and Business Regulation.

Summer 1988

CableCast

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Consumer Concerns

Remote Control Units

by Renee Terry, Counsel

The Commission has been receiving an increasing number of inquiries and complaints from subscribers concerning cable operator remote control policies. Consumers generally object to paying remote control rental fees, which range from \$1.00 to \$4.95. To avoid these rental charges, subscribers who want to purchase a remote control unit from their cable operator are often dismayed to learn that the remote control units are not for sale.

In addition, many subscribers are frustrated by the lack of versatility of cable remote control units. Remote control units for television sets or VCRs are often incompatible with cable converters. Thus, many households have three different hand-held units to operate three pieces of equipment. To eliminate this problem, some consumer electronics manufacturers have developed "universal" remote control units, or "multi-remotes," which cost between \$60—\$125 and are advertised as being capable of operating television sets, VCRs and converters. Subscribers who purchase these expensive multi-remote control units often discover, however, that they are still unable to use the unit without paying the cable operator a remote control fee because the operator controls the remote function of the converter.

In response to these concerns, the Commission conducted a survey of cable operator remote control practices. The results of the survey show that the majority of cable operators charge for "remote control service," which they define as rental of a remote capable converter *and* a remote hand-held unit. Frequently, this separate remote surcharge is dropped for subscribers who purchase two or more premium services.

The remote control function on most converters works through the emission of a tiny ray of infrared light generated by the hand-held unit which is picked up by a receptor, or eye, in the converter and translated into action within the box.

For remote control purposes, converters fall into three categories. The simplest and least expensive converters are non-addressable and do not have any remote control capability. The second level are non-addressable converters with remote control capability. In these converters, the infrared receptor is always on. Finally, in most fully addressable systems, the infrared receptor in the converter can be turned off and on automatically from the system's main computer.

Operators who charge for remote control capability essentially "rent" this portion of the technology of their converters to their subscribers. In a non-addressable system, a subscriber who wants remote capability will usually get a different converter for the additional charge. In an addressable system, a subscriber discontinuing remote service usually will be unable to use the remote function because the operator will disable the infrared eye in the converter. Thus, even subscribers who purchase "multi-remotes" will be unable to use them unless they continue to pay the remote rental fee.

Operators justify this policy by arguing that they are recovering their investments in remote or addressable remote technology. Some operators also point out that they provide free service, repair and replacement of all remote related equipment, including, in some cases, replacement of batteries in the hand-held units.

At least one operator, Warner Communications, has taken steps to permit the use of multi-remotes.

Warner has broken its "remote fee" into two parts: a \$1.00 charge for rental of Warner's hand-held unit which will work with Warner converters, and another \$2.00 "remote access fee," which effectively keeps the infrared receptor on. Thus, a subscriber may purchase his or her own multi-remote and save some money: the subscriber, however, will still have to pay a monthly "rental" of the remote capability of the converter.

While most Massachusetts operators charge for remote control service, some do not. In these systems, such as Cablevision of Boston, remote capability comes automatically with a certain level of service. Thus, all subscribers to a certain tier receive the same remote-capable converter and a hand-held unit to go with the converter. If the hand-held unit is lost or damaged, the subscriber must pay a fee ranging from \$15—\$35 to replace it.

Still other operators maintain a separate charge for remote service, but if a subscriber turns in the hand-held unit and discontinues "remote control service," the operator does not exchange the converter or disable the remote. In these cases, a subscriber would still be able to use an adaptable multi-remote. One operator with such a practice states, however, that it considers use of multi-remotes without payment of the monthly charge to be "theft of service."

Only one operator in the state does not rent, but only sells, hand-held units. Shrewsbury Electric Light Company, a municipally owned system, sells hand-held units for \$25 or gives them free with subscription to two pay services. Subscribers, however, can use their own multi-remotes in the system.

In response to the Commission's survey, some operators expressed their reservations about multi-remotes. First, operators say, they are not "universal" remotes, but

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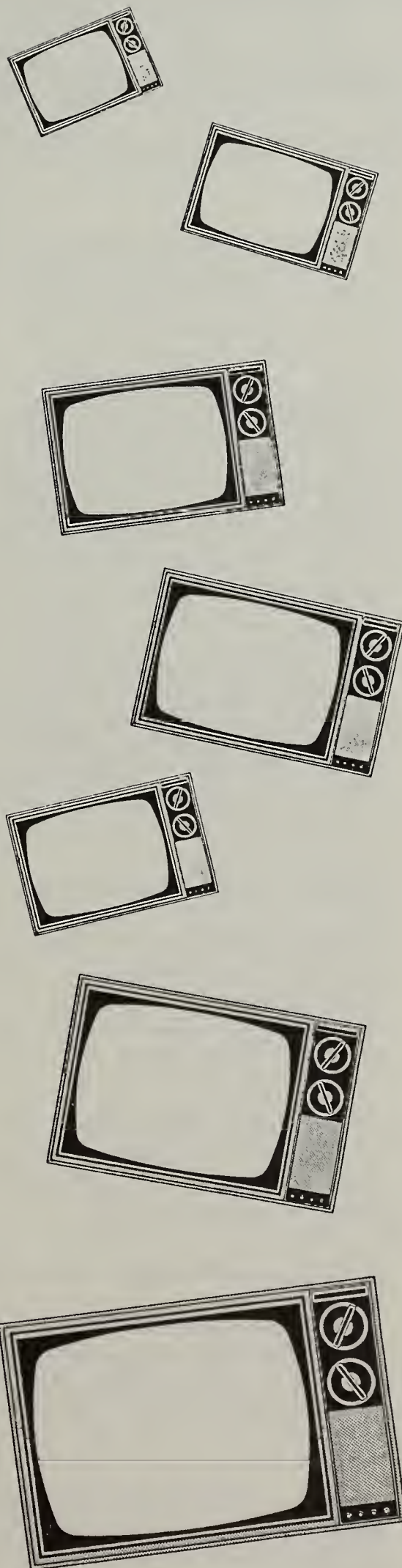
Consumer Concerns

(Continued from page 4)

only work on some models of converters. Operators with large investments in a variety of converter models within a single system fear that widespread use of multi-remotes will affect their equipment decisions. For example, if an operator needs to take a converter out of service for some reason, it may be difficult to take into account the specific brand of multi-remote owned by the subscriber, to make sure the remote remains compatible. Operators also are concerned that it is difficult to program some of the multi-remotes on the market, and fear that operator equipment may be required to program the unit. Finally, several operators expressed concern that subscribers would continue to look to the cable operator for service and repair, even though the multi-remote had been purchased from a retailer.

Several cable operators offer or will soon offer multi-function hand-held units, in response to subscriber complaints that the hand-held units offered by cable operators are not as sophisticated as those available on the market. For an additional fee (or with pay-per-view club membership), operators will rent advanced hand-held units which have volume control, built-in parental control, favorite channels, and VCR programming capabilities.

The results of the survey raise questions about cable operator remote control policies which the Commission intends to explore further. These policies include whether remote practices constitute anti-competitive behavior by operators; what return on the industry's investment in the remote technology is appropriate; and what obligations cable operators have to provide technical information to subscribers about remote control units. Any action taken in response to these issues will require a careful balance between the rights and interests of both subscribers and cable operators.



Regulatory Affairs

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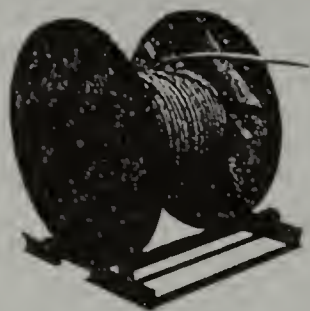
to the Board. The Town argued that transferee TCI would be unresponsive to the community's needs, and that the transfer would have a detrimental effect on service. The Commission, found, however, that the Town did not adequately substantiate its arguments.

Belmont (CATV Docket A-65)—In late May, the Commission held a pre-hearing conference in the matter of Belmont Cable Associates' ("BCA") appeal of the decision of the Belmont Board of Selectmen to award a license to Nashoba Cable ("Nashoba") and award it a lease of a municipally owned cable system. BCA alleged that Nashoba's application failed to disclose, as the issuing authority report requires, that Nashoba was allegedly involved in a "proceeding" in the Town of Danvers and that Nashoba failed to disclose adequately the status of its limited partnership interests. Both Nashoba and BCA moved for summary decision by the Commission.

Section 22 Cases—The Commission has appealed an October 1987 Superior Court decision finding the state's access-to-premises statute (ch.166A, §22) unconstitutional because it allegedly failed to make clear that property owners have a right to a jury trial in proceedings to assess damages for cable TV installations. The Supreme Judicial Court will hear the case this fall.

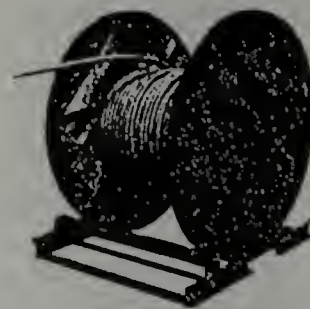
Rulemakings

Billing and Termination of Service and Security Deposit Rulemaking—At press time, the Commission was in the final stages of issuing a *Notice of Proposed Rulemaking* (Docket No. R-19), which will propose changes in Billing and Termination of Service Regulations, 207 CMR 10.00, Security Deposit Regulations, 207 CMR 9.00, and a few additional changes in other regulations. For more information, including the date of the public hearing on the proposed changes, see the Commission's *Notice*.



WireLines

The Cable Information X-Change Cable TV Commission Publications



New Publications Cable Interpretations File

The new Cable Interpretations File ("CIF") is now available for public use. The CIF is a compilation of 17 years of selected Commission correspondence on issues in cable regulation. It is meant to serve as a research tool for attorneys and others interested in learning more about Commission interpretations of various subjects such as access-to-premises statutes, licensing rules and service and installation issues.

The CIF is a four volume, loose-leaf style set of notebooks containing Commission letters and memoranda. It is divided into 31 subjects, from Access Corporations to Rate Regulation to Transfers. Within each subject, correspondence is arranged chronologically, so that a researcher can trace the development of a certain issue throughout the Commission's history.

An integral part of this new research tool is the CIF Index, a 40-page concise summary of all materials found in the four volume set. The Index contains a list of each interpretation by subject matter, also arranged chronologically. For each interpretation, the Index lists a brief summary of the sub-topics and/or important principles of law discussed therein. The Index also lists each legal authority cited in the interpretation. A researcher, therefore, could use the Index to check the legal development of a particular statute or legal principle.

The CIF represents an important step forward in not only formulating a readily-available source for the Commission's positions on various subjects, but also in presenting, in a single source, a snapshot of the historical development of cable regulation in Massachusetts. The Commission encourages those in-

terested to become acquainted with this new resource. The Index is available from the Commission for \$10.00.

Consumer Rights Pamphlet

This new pamphlet discusses consumer rights in the following areas: billing practices, advance billing, rate increases, delinquency and disconnection of service, credit for outages, security deposits and dispute resolution. Free.

Existing Publications 1987 Annual Report

The Commission's Annual Report for FY 1987, reporting major activities over the past year, as well as subscriber counts and license fee payments. Free.

Massachusetts Cable Systems List

Includes 1987 listing of all towns and operators, addresses and phone numbers of local operators and parent corporations and recent subscriber counts. \$6.00.

Operators and their Towns

Includes list of all cable operators in Massachusetts and municipalities served by each. \$2.00.

Directory of Municipal Cable Contacts

Addresses and phone numbers for over 150 cable advisory committee contacts and more than 250 issuing authority cable contacts. \$6.00.

Massachusetts Cable Statute (M.G.L. Chapter 166A) and Massachusetts Cable Regulations (full set). \$10.00.

Cable Communications Policy Act of 1984 (47 U.S.C. 521 et seq) \$2.00.

Consumer Protection Regulations

The Commission's Billing and Termination of Service regulations contain rules affecting several key areas of cable service: late payment, due dates, disconnection, advance billing, form of bill and complaint resolution timetables. Free.

The Cable Licensing Process in Massachusetts: A Practical Guide for Municipal Officials and Cable Advisory Committees

Published in 1981, this publication provides a comprehensive guide to the initial licensing process for local officials. \$6.00.

License Renewal Packet

Contains federal renewal statute, legislative history, Commission overview of renewal process and flow chart of a renewal process. \$2.00.

Rates Update

The Commission has compiled a list of all rate increases implemented since federal deregulation took effect in December 1986 and updates this list monthly. Includes old and new rates. \$5.00.

The above fees cover partial cost for reproduction. The Commission encourages public access to its documents. Copies of any public documents not included on this list may be made at 20 cents per page.

Access Advice: Creating Guidelines for Your Facility

by Kimberly A. Kyle,
Municipal Assistance
Coordinator

In communities where access is just beginning, programming directors are frequently faced with the difficult task of establishing guidelines for the operation of an access facility. This task involves cooperation, collaboration and agreement among different people on many important issues.

Because public access is based on freedom of expression, the imposition of rules may meet resistance. Rules and procedures, however, may be necessary to ensure that public access channels will operate fairly for all potential users. Rules give direction for the users and set the tone for management of the operation. (See box.)

Balancing the open spirit of access against the restrictive nature of rules is key to a successful access operation. Communities with experience drafting rules and policies advise new organizations to create a balance through the investment of time and research in the planning stage. Several Massachusetts communities offer the following tools which have proven helpful to them in the early planning stages:

- plan a time frame and a series of meetings between municipal representatives and the community group involved in the drafting;
- talk to persons at other facilities who have completed the process and ask to review their rules and policies, remembering that rules from other communities may not be strictly applicable to your access facility;

- think about hiring a consultant to assist in the process if funding is available; and
- keep in mind that the end product should reflect the uniqueness of the community.

The most important point to remember when drafting rules for a new organization is that it is **new**. The concept of an access channel may be new to the community and

the rules and procedures new to the facility. Not every situation which occurs during the operational life of the organization will be covered by a rule or procedure. The rules governing the operation of an access facility should therefore be revisited on a regular basis. As the goals of the operation change, so must the rules.

The following suggestions may be used as a starting point in formulating guidelines for your access facility. They are not meant to be definitive rules for every community. Remember, let the uniqueness of your community shine through!

- (1) The rules should be available for all users in the form of an organized, easy-to-read manual.
- (2) If the organization is run on a membership basis, the membership form should accompany the rules manual. Membership criteria should be stated clearly. Fees, if any, should be mentioned in the membership information.
- (3) The philosophy and description of the access corporation should be included in the introduction to the rules manual.
- (4) Penalties for abuse of equipment or violation of the facility's rules and procedures should be indicated in the manual or on the membership form, as should any appeals process.
- (5) Training, production procedures, equipment resources

and equipment certification steps should be spelled out. All forms involving equipment responsibilities should accompany the rules.

- (6) Guidelines for program production, including airing schedules, should be detailed in the rules.
- (7) Information regarding program content and rights of the producers should be explained thoroughly. This section should include guidelines regarding obscenity, libel, copyright, commercial advertising, invasion of privacy, production liability, sponsorship, credits, and political campaigning rules.
- (8) A statement of compliance to be signed by the producer should accompany the rules package. The statement should outline all responsibilities individuals assume when they become involved in access productions. The access facility should maintain a list of all users and compliance statements for a period of time. Often facilities will keep these records for two years or more.

Blackout Blues

by William August,
General Counsel

"The ballgame isn't on," she said.

"Thank goodness!" he said.

"How in the world can you say that? A masterpiece of athletic competition is being played right now and we can't even get it on TV."

"I thought maybe we could do something together."

"This is a big game, a **very** big game. I don't understand why it has been blacked out."

"Why don't you call the Cable TV Commission?"

Next Day, Fan Calls Cable TV Commission:

"Hello. Last night my cable company blacked out the Celtics game on TBS. What's going on?"

"That's the question of the day. It may have been because of the sports blackout rule."

"Oh, uh, thank you. But wait a minute. What is the sports blackout rule?"

"The Federal Communications Commission adopted the rule. If a game is not telecast locally, then the Bruins or Celtics or whomever holds the rights to a sports event can stop a cable operator from cablecasting the game on a non-local, or distant signal such as TBS. The rules were supposedly designed to help local TV maintain the home territory in sports broadcasting. The cable industry opposed these rules when they were being adopted, so don't blame your cable operator."

"Then what can I do?"

"Well, have you ever considered moving to Western Massachusetts? Only cable communities (in whole or in part) within 35 miles of the main post office of the city of the game are subject to the rule. For most professional sports teams in this area, including the New En-

(Continued on page 10)

Syndex: Return of

by John D. Patrone,
Counsel

In the year-long debate about the Federal Communications Commission's ("FCC") 1987 proposal to reenact syndicated exclusivity ("syndex") rules, many cable officials were predicting dire consequences for the home viewer. National Cable Television Association ("NCTA") General Counsel Brenda Fox argued that programming blackouts caused by adoption of syndex rules would turn cable programming into "incredible swiss cheese where there are more holes than cheese." (*Cable Television Business*, 08/01/87) No doubt to the chagrin of Fox and others in the cable industry, "swiss cheese" television may return in less than a year.

In late May, the FCC re-imposed the syndicated exclusivity rules which it had deleted in 1980. The syndex rules confer on broadcasters the right to force cable systems to delete programming carried on the systems via distant signals for which the broadcasters have already obtained "exclusive" local broadcast rights. In other words, let's say that a cable system in the greater Boston area carried WWOR, a independent superstation from New Jersey which airs "The Morton Downey, Jr. Show." Under syndex, WSBK Channel 38 in Boston, which airs 'Morton Downey' locally, could force the cable system to blackout the show on WWOR if Channel 38 had exclusive rights to the show.

When it deleted the rules in 1980, the FCC believed that "the public is harmed more than helped by the [Federal Communications]

Commission's . . . syndicated exclusivity rules" By 1987, however, the Commission had come to believe that the repeal of syndex "had the unintended effect of tilting the playing field in favor of cable and against broadcasters." In announcing the decision to reimpose the rules, the FCC noted that it expected that the rules would end "the 'reign-of re-runs' and stimulate the purchase of new programming by cable systems, leading to increased programming choices for consumers."

The FCC stated that blackouts caused by the deletion of exclusive programming "would not result because it fully expects cable operators to substitute other nonduplicative programming rather than leaving a blank screen." In addition, the rules do not require deletion when the local broadcast station has not secured **exclusive** rights to the program.

New Rules

As this article goes to press, the FCC has yet to release the full text of the new rules. However, the news release announcing the decision did provide some preliminary information about how the rules will work. First, syndicated exclusivity will be granted only for programs for which a broadcaster has an exclusive contractual right to air. According to the FCC release, in order for the contract to be enforceable, "it would have to contain precise syndicated exclusivity language specified in the rules of the FCC so that there is no ambiguity" about whether exclusivity applies. Contracts entered into before the enactment of the new rules must have language specifically contemplating the amendment of FCC

ce

Federalism Swiss Cheese TV?

rules, or the contracts must be amended to reflect such an intent between the broadcaster and program supplier.

Second, all stations—including superstations—will now be able to negotiate national exclusive rights for programming. This means that WWOR could contract with a program supplier for exclusive rights to air 'Morton Downey,' so no local channel could force a blackout.

Third, syndicated exclusivity will not be granted against a station that is generally available over the air. Thus, cable systems need not delete a program where the cable system falls within the Grade B contour of the station carrying the program or where the station is significantly viewed even though the station may technically be a "distant signal." This is most likely to occur in areas where television markets overlap, such as in the Boston/Providence area. Fourth, cable systems with less than 1,000 subscribers are exempt from the syndex rules.

Industry Challenge

As soon as the FCC releases the text of the rules, the cable industry is expected to challenge them, on two grounds. First, throughout the last year of debate over syndex, the FCC never released any proposed rules, so that parties were unable to tailor their comments to a specific FCC proposal. Second, §624(f) of the Cable Act provides that "[a]ny federal agency, state or franchising authority may not impose requirements regarding the provision or content of cable services, except as expressly provided in this title." Many cable analysts believe that this provision prevents

the FCC from adopting new syndex rules.

Effect of Rules

Many cable companies submitting comments to the FCC believe that the rules, which go into effect in one year, will create chaos in the cable industry: "Rather than promoting diversity of program choices, syndicated exclusivity would undermine that goal by killing national and regional superstations—signals that provide original entertainment, sports and news programming along with their heavy schedules of off-network reruns." (*MultiChannel News*, 07/27/87) What remains to be seen is what effect the provision allowing superstations to contract for national rights will have on broadcasters or the cable industry.

When the rules do go into effect, some industry analysts are expecting trouble. A study prepared by United Video, Inc., the common carrier for Chicago superstation WGN, predicts that syndex will cost the cable industry \$180 million per year in new operating costs, an average of \$5 per year for every cable home. Cable companies will be forced to hire more employees to monitor program deletions and to handle the inevitable deluge of consumer complaints when "M*A*S*H" or "Wheel of Fortune" is blacked out on the cable system superstation because the local broadcast station has contractually secured the exclusive rights to air the programs in that area.

While cable operators fear the wrath of subscribers will come down upon them when the new syndex rules go into effect, FCC Commissioner Dennis Patrick sees

(Continued on page 10)

Rate Regulation

by William August,
General Counsel

The cost of cable television continues to be a major concern for many in the cable community. In the past year, the Cable Commission, courts, municipalities, Congress and the FCC all addressed the issues of cable rates and the scope of rate deregulation.

Technical Wrangling

The FCC adopted several amendments supported by the Cable TV Commission and other parties. The FCC tightened its test for counting available broadcast signals, and it ruled that municipalities may recover costs if they prevail in rate reregulation petitions. Significantly, a broadcast signal now can be counted towards the three-signal competition test only if it covers 100 percent of the community of service. The Cable TV Commission urged the FCC to restrict operator use of so-called "significantly viewed" signals to satisfy the three-signal deregulation test. Under the new rules, an operator must provide viewing data showing that a signal actually enjoys significant viewership in the community or system of service.

At the same time, however, the FCC rejected more basic challenges to the meaningfulness of the three-signal test of competition to cable television and to the use of the Grade B and significantly viewed tests as a threshold. For example, the FCC rejected the Cable TV Commission's argument that the FCC should have an empirical basis for its position that the availability of three television signals constitutes meaningful competition to cable. The Commission also objected to the fact that certain signals which enjoy as little as a two percent share of viewing hours may

(Continued on page 10)

Blackout Blues

(Continued from page 8)

gland Patriots, the main post office in Boston would be the starting point. Of course, the broadcast blackout rules, the network non-duplication rules, and the new syndicated exclusivity rules (not to mention exclusive contracts between regional sports networks and the teams) are completely different, and, depending on your viewing habits, should also be considered before you move."

"What are the broadcast blackout rules?"

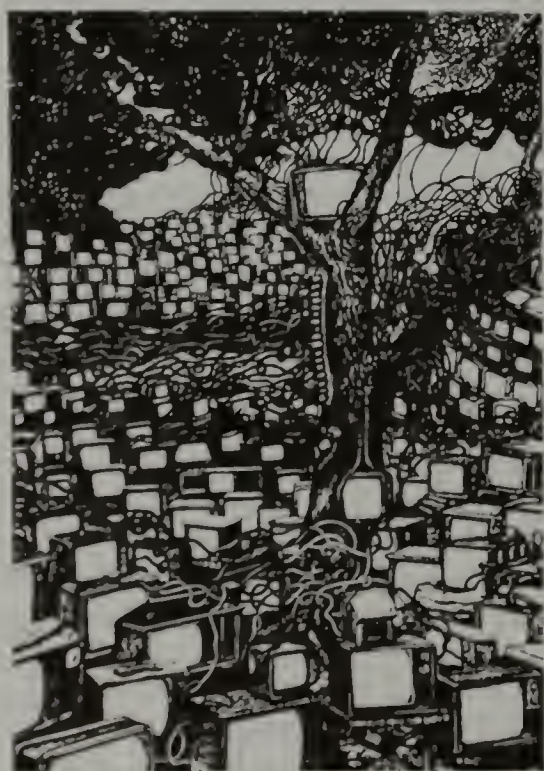
"In broadcast, unlike cable, contractual arrangements and a self-imposed industry agreement govern sports blackouts. In a nutshell, many local TV stations may be contractually bound not to telecast a home game when the gate has not sold out, or when a pay channel has primary rights to a home game. And when the game is not on the local TV station, the **cable** blackout rule may be triggered."

"Oh, now it's clear to me! That's when I should be in Western Massachusetts."

"Not necessarily. Just make sure you're not in the 35 mile zone."

"I'll call a real estate broker first thing."

"Glad I could be of some help."



Swiss Cheese

(Continued from page 8)

things a little differently. "The big winners . . . are the consumers. They will benefit by a smooth transition to a fair and more competitive market structure which promises richer, more diverse programming." (*Broadcasting*, 05/23/88).

But cable industry officials remain unconvinced. NCTA President James Mooney warned that "[p]eople whose favorite programs disappear will be angered and bewildered." (*Broadcasting*, 05/23/88). And, in an FCC debate just two weeks before the adoption of syndex, Turner Broadcasting System Vice President Bert Carp argued that the new rules would "infuriate" consumers, rather than help them, producing 'massive blackouts' and public disruptions." (*Television Digest*, 05/02/88).

Cable operators hope Carp is wrong, but fear that the return of swiss cheese television is inevitable.

Rate Regulation

(Continued from page 7)

be treated as significantly viewed, and therefore counted towards the three-signal deregulation test.

Significance of Rulemaking

The FCC and the cable industry believe that if rates go up too much, consumers simply won't buy cable. Industry leaders stress that in the first six months of federal rate deregulation, an average cable subscriber's bill increased only 6.7% nationally. And, they argue, the availability of three or more broadcast signals in a community provides the competitive spur needed to stabilize rates.

The immediate impetus behind the Commission's participation in the FCC's rate rulemaking was protests by Cape Cod and Berkshire County local officials. Many of these communities were rate regulated under state law, but were deregulated under more lenient federal standards. Officials in these

towns argued that signal reception was so poor in their communities that broadcast signals could not provide meaningful competition to cable.

In addition, industry trends and practices have generated a plethora of rate questions and problems across the Commonwealth. The unprecedented number of system sales (see cover story) has been financed by large amounts of debt and the impact of the debt expenses on future cable rates has caused concern among municipal officials. In many communities, local officials and cable operators are embroiled in controversies over rate hikes (for example, Braintree's 100% rate increase), the elimination of basic economy packages, and the use of federal rate deregulation as a basis for avoiding license rate freeze provisions.

In the courts, both the Town of Norwood and the City of Boston are arguing that federal rate deregulation does not supersede rate freeze provisions in cable licenses. The Town of Norwood persuaded the Massachusetts Supreme Judicial Court that a rate freeze provision in its cable license was valid, and the Town is now before the Superior Court for determination of damages from Adams-Russell, the cable operator. The City of Boston has challenged Cablevision of Boston's position that its rate freeze is federally preempted. Cablevision is now in federal court asking for a declaration that its rate freeze has been preempted by federal law.

Currently, there is little objective data on rate increases and the effects of cable rate deregulation. Massachusetts Congressman Edward J. Markey, Chairman of the House of Representatives Telecommunications Subcommittee, has commissioned a General Accounting Office study on rate increases. Rates and the cost of cable will also continue to be a top priority of the Cable TV Commission.

1987: The Fourth Annual Massachusetts Community Television Contest Winners

The Fourth Annual Massachusetts Community Television Contest brought together a large group of talented and dedicated producers from all over the Commonwealth, with more than 300 entries submitted in 22 categories. The following is a list of the winners.

SPORTS: Media Professional

David F. Walzer
THANKSGIVING CLASSIC
PREGAME SHOW
Continental Cablevision, Needham

SPORTS: Community Volunteer

Mark Ockerbloom
MIDDLESEX LEAGUE
SCOREBOARD
Continental Cablevision,
Winchester

PSA: Media Professional

Patricia Farrell
THE PERFECT GIFT
American Cablesystems

PSA: Community Volunteer

Edward L. Sicard
COCAINE ABUSE
Continental Cablevision,
Northampton

PERFORMING ARTS/STAGE:

Media Professional
Steven Kostant, Stefan Koukias
VOICE OF THE VIOLIN
Greater Boston Cable Company

PERFORMING ARTS/STAGE:

Community Volunteer
Chris Cardoni
WOLLASTON BEACH
American Cablesystems, Milton

SHORT DOCUMENTARY:

Media Professional
Matt Scott
MILL GIRLS
Cable 43, Chelmsford

SHORT DOCUMENTARY:

Community Volunteer
Ron Leombruno
HANDI-KIDS RIDING PROGRAM
Bridgewater Community TV

LOCAL NEWS:

Media Professional
William McColgan
CABLE 8 NEWSBEAT
Sharon Community Television

LOCAL NEWS:

Community Volunteer
William McColgan, Robert
Bellaveau
UPDATE HINGHAM
American Cablesystems, Hingham

ENTERTAINMENT/VARIETY:

Media Professional
Patricia Zur
PLEXUS: ANIMATORS AND
THEIR ART
Continental Cablevision, Brockton

ENTERTAINMENT/VARIETY:

Community Volunteer
Elaine Bates
PG-13, SHOW 2
UA-Columbia Cablevision

DOCUMENTARY:

Media Professional
Beth Harrington
AVE MARIA: THE STORY OF
THE FISHERMAN'S FEAST
Adams Russell Cablevision

DOCUMENTARY:

Community Volunteer
Mark Kosinski, Randy Buccini
BRADFORD VIEWPOINT:
COMMUNITY IN CRISIS
MVT Channel 6, Public Access

PUBLIC AFFAIRS:

Media Professional
Barrett Lester
HEALTHLINE: VACATION
PSYCHOLOGY
Continental Cablevision, Brockton

PUBLIC AFFAIRS:

Community Volunteer
Don Abrams
THE NORTHAMPTON SURVIVAL
CENTER
Continental Cablevision,
Northampton

EDUCATIONAL/INSTRUCTIONAL:

Media Professional
V. Paul Deare, Center for
Communications Media,
Univ. of Mass.
URBAN SCHOLARS
Many systems state-wide

EDUCATIONAL/INSTRUCTIONAL:

Community Volunteer
Thomas G. Curtin
TEACHERS ARE PEOPLE TOO
Nashoba Cable, Concord

MUSIC: Media Professional

David Lena
SCREAMING COYOTES
Greater Boston Cable Company

MUSIC: Community Volunteer

Patricia M. Dunne
JUST SAY NO: MAKE YOUR
VOICE HEARD
American Cablesystems, Quincy

1987 Massachusetts Hometown USA Winners

PROGRAMMING FOR YOUTH:

Community Volunteer Single
Elaine Bates
PG-13
North Attleboro

EDUCATIONAL:

Community Volunteer Series
Matthew Scott
Best of Cover Stories
Chelmsford

BEST OF PUBLIC ACCESS PROGRAM PROMOTION:

Community Volunteer Single
Monica Baebita
1986 Channel Promo
Northampton

ETHNIC EXPRESSION:

Community Volunteer Series
Lorraine Alexander and Mark-
Catherine Russo
McKertich
Hylites
Watertown

EDUCATIONAL:

Community Volunteer Single
Sean Kelleher
What About the Trash?
Canton

LOCAL NEWS:

Media Professional Series
Susan Bennett
Lowell Local Cable News
Lowell

DOCUMENTARY

AWARENESS:
Community Volunteer Single
Mark Kosinski, Randy Buccini
**Bradford Viewpoint: Com-
munity in Crisis**
Haverhill



PROGRAMMING FOR SENIOR CITIZENS:

Community Volunteer Single
Eileen Mulrey
Class of '36
Brookline

MAGAZINE FORMAT:

Community Volunteer Single
Victoria Hall
We are the City
Jamaica Plain

ENTERTAINMENT:

Media Professional Series
Billy G.
The Cable Comedy Show
Brookline

INTERNATIONAL:

Community Volunteer Series
Enough Crying of Tears
Jamaica Plain

BEST PSA:

Community Volunteer Single
Susan Nestor
Malpractice Premiums
Springfield

OVERALL EXCELLENCE IN LO:

Cablevision of Brookline
Composite Tape
Brookline

MAGAZINE FORMAT:

Community Volunteer Single
Victoria Hall
We are the City
Jamaica Plain

1988 Massachusetts System Ace Winners



PROGRAM SERIES, COMEDY/VARIETY:

Cablevision of Brookline
The Cable Comedy Show,
Starring Mike McDonald

PROMOTIONAL PROGRAM- MING, SYSTEM SUPPORT PROGRAMS:

Continental Cablevision of
Springfield
After the Fact

PROGRAM SERIES, CHILDREN'S PROGRAMMING:

Cablevision of Brookline
Teen Beat

Massachusetts Educational Media Association Winners

ENTERTAINMENT

Matthew Goltz, Foxboro High
School
Media Teachers: Barbara
Selvitella and Connie
Schlotterbeck
DONUT WORLD
Massachusetts Cablevision

NEWS

Medford High School News Team
Media Teachers: David Polcari
and Richard Trotta
**MEDFORD HIGH SCHOOL
NEWS II**
Warner Cable Communications

The 5th Annual Massachusetts Community Television Contest—1988

The Massachusetts Community Television Contest is designed to recognize the work of community-based video producers and to encourage the use of local cable television channels.

Entrants

Entrants must identify themselves within one of the following two groups of producers:

- Media professionals, including access/LO staff, media educators, independent producers and others who are paid to produce programming.
- Community volunteers, including those who do not earn money for program production.

Programs produced by both media professionals and community volunteers should be entered under the producer type reflecting the individual or those individuals having the greatest technical control over the production.

Judging

Entries will be judged by panels of video producers, cable TV programmers, and cable TV subscribers on the basis of the following factors:

- how community concerns or distinct local cultural activities are addressed;
- the extent to which the programs develop and maintain viewers' interest;
- whether there is an appropriate match of program content to the production format or style;
- production values, such as camera work and picture composition; sequence and pacing; audio; and lighting; and
- whether the program approached the subject matter in a unique or creative way.

To assist the judges in understanding how the program represents the spirit of community programming, entrants may submit support materials. Support materials should be succinct and may include the following information: how the program idea evolved; who was involved in the production and in what capacity; what type of resources (i.e., money, equipment, community contacts) were used; and what the program's impact was on the community.

The judges reserve the right to re-categorize entries or not to make awards in a category. All interpretations of contest rules will be made by the Massachusetts Cable Television Commission. All decisions by the judges are final. Awards will be trophies, plaques or certificates and will not be monetary in nature.

Rules

1. Entries may be produced in any format but must be submitted on 3/4" cassettes. DO NOT SEND MASTERS.
2. Entries must be received by Friday, September 9, 1988 at 5 p.m. and be accompanied by an entry form.
3. Entries are free, but limited to two from each participating producer. Each cassette must be accompanied by a separate entry form.
4. Entries longer than 1 hour in length will not be considered.
5. Entries must have been first publicly shown on a Massachusetts local origination or access channel.
6. Entries must have been cablecast in Massachusetts between September 11, 1987 and September 8, 1988. They must be produced by Massachusetts residents or Massachusetts-based organizations.
7. Entries must be submitted as individual programs only. No component edits should be submitted.

MAEM Video Contest

In conjunction with the Massachusetts Association of Educational Media, the Massachusetts Cable Television Commission will give first place awards to students in grades 9-12 who have participated in MAEM's School Library Media Month Video Contest. Any high school student or group not participating in the MAEM contest may compete in the Massachusetts Community Television Contest.

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Community Television Contest

(Continued from page 13)

Announcement of Winners

Nominees for the awards will be notified by mail. The winners will be announced at an Awards Ceremony to be scheduled in the Winter, 1988.

Tape Exchange Program

The Massachusetts Cable Television Commission will institute a voluntary tape exchange program for all participants in the Community Television Contest. A list of authorized tapes will be prepared which will include the name and phone number of the producer, the title and length of the tape and a brief description of the subject matter. The list will be mailed to all cable operators and access organizations in the state and will be available to the public on request. Any programming director wishing to view and cablecast the tape may contact the producer directly. The Massachusetts Cable Television Commission will not distribute any tapes itself. No tape will be included in the Tape Exchange without the written consent of the producer listed on the entry blank.

Categories

Local News	Performing Arts
Public Affairs	Entertainment/Variety
Documentary	Music
Municipal Issues	Sports
Public Service Announcement	Ethnic/Cultural
Educational/Instructional	Health

Category Descriptions

Local News—a live, regularly scheduled program providing coverage of issues, people, places and events in the community through reports, interviews and video clips.

Public Affairs—a program which explores issues, people, places or events of current concern to an informed citizenry from a global, national or regional perspective.

Documentary—a program portraying a real life occurrence, the life of a person, place or organization, or an issue of public importance.

Municipal Issues—a program which focuses on issues, people, places or events of particular concern to a local community or communities.

Public Service Announcement—a short piece or series of pieces promoting positive social behavior, a non-commercial service, a non-profit organization or a community event.

Educational/Instructional—a program designed to educate or instruct viewers on a particular subject or task.

Performing Arts—a presentation of a concert, play, dance or other artistic event.

Entertainment/Variety—a program designed to amuse or entertain an audience: comedy, sketch, a light subject talk show or a combination of such features.

Music—a tape about a musical composition, instrument or event, or a creative production featuring the use of music.

Sports—coverage of sporting events or athletes.

Ethnic/Cultural—a program focussing on the special events, practices, customs, or abilities of a particular segment of the community.

Health—a program exploring physical or mental health issues.

***** ENTRY BLANK *****

Producer's Name _____

Mailing Address _____

Phone _____

Media Professional _____ Community Volunteer _____

Category _____

Title of Program _____

Running Time _____ Cablecast Date _____

Cable System _____

Signature _____

Signature gives the Massachusetts Cable Television Commission the right to retain a copy of the program for public viewing in its library and other exhibitions on a non-exclusive basis. Signature means the producer has the authority to submit the entry.

Tape Exchange (check to authorize listing)

_____ I authorize the Massachusetts Cable Television Commission to include a description of this program in its 1988 Community Television Tape Exchange.

Please include a brief description of the program.

Send to: Massachusetts Cable Television Commission
100 Cambridge Street
Suite 2003
Boston, MA 02202

On The Video Cart

Video Materials Available from the Cable TV Commission

In the past year, the Cable TV Commission instituted two information sharing programs related to the annual Community Television Contest. The Commission encourages all community producers and programming directors to take advantage of these programs.

Contest Coverage

Complete video coverage of the 1987 ceremony (3/4 inch, 81 minutes) is available for any community wishing to show the ceremony on its access or local origination channel. Coverage of the 1988 contest will also be available for viewing in the early part of 1989. Please contact the Commission if you would like to borrow the two tapes.

Tape Exchange

The Commission initiated a voluntary tape exchange program in the form of a publication listing

tapes submitted in the 1987 Contest. Producers gave permission to have their tapes included on the list. The publication includes, by category, the tape title, name, address and telephone number of the producer, and a brief description of the subject matter. Community producers wishing to view and cablecast any tape on the list may contact the producer directly. The Commission will not distribute any tapes itself. The 1988 Contest entry blanks include an authorization section for producers who wish to be included in the 1988 Tape Exchange publication.

Cable Consolidation

(Continued from page 1)

cable operators to heavily invest in programming suppliers—particularly cable networks. U.S. Senator Howard Metzenbaum is currently surveying cable programmers and interested purchasers of cable programming to determine whether corrective legislation is needed on vertical integration. At the local level, municipal officials fear that cable operators will use their market position to favor their own programming ventures at the price of program diversity and in spite of local interests.

This fear of losing localism—a concept central to cable television's development and operation—was relied upon recently by the Town of Somerset when it denied the application of TCI for transfer of a controlling interest in Heritage Communications. The Town's denial was based on its fear that control by the nation's largest cable operator would inexorably lead to a dilution of local influence within the cable system. Under Massachusetts law a cable license may not be transferred without the prior written consent of the issuing authority, "which consent shall not be arbitrarily or unreasonably withheld." (M.G.L. ch.166A, §7). The Commission has in the past held that the issuing authority's most important concern is whether the transferee can "step into the shoes" of the transferor. In evaluating the transferee's ability to

assume that role, the issuing authority may consider several factors, including its financial, managerial, and technical qualifications as well as its character and experience.

Transfer Denial Overturned

In Somerset, the Town adopted several reasons for its denial, most of which pointed to a fear that ownership of the cable license in the Town would dilute local influence, which would, in turn, reduce operator responsiveness. Among the justifications for the Board's conclusions were TCI's dominance of the cable industry, its investment in programming services, and the Town's negative experience shifting from, in its view, a locally-oriented Rollins to a more impersonal, larger Heritage.

On appeal, the Commission held that a lack of responsiveness by the operator, if adequately demonstrated, might prove a lack of managerial qualification. The Commission stressed, however, that the reasons given by the Town were speculative or not adequately substantiated, and that therefore the denial of the transfer was "arbitrary and unreasonable." The Commission remanded the case to the Board for further proceedings.

The ownership of a municipality's sole cable system has important consequences for the community. Several towns are concerned that the high prices being paid for systems today will result in higher

rates and lower services. Cable companies argue, however, that denial of transfer based on a fear of higher rates is a form of impermissible rate regulation. On the other hand, municipalities suggest that in spite of rate deregulation, subscribers should not be required to bear burdens imposed through stock speculation. These municipalities also argue that the market does not really function to regulate cable rates because with only one cable operator per town, cable has no effective competition. This debate about rate regulation obviously has implications which will be addressed further by Congress and the courts.

While municipalities have legitimate concerns about the effect a new cable owner will have on the operation of the local cable system, few deny that cable operators should have freedom to sell their assets or shares to responsible buyers. Operators argue that municipalities are protected by the requirement that the buyer must be able and willing to abide by the terms of the license. However, the judgments of what constitutes a responsible or "fit" buyer and how to determine that competence are issues that remain to be explored by municipalities and the Commission.

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